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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

08 CR 2063-WQH

UNITED STATES OF AMERICA, Plaintiff, v. TULIO ESPINOZA-DE LOS MONTEROS (4), Defendant.	Magistrate Case No. 08MJ1781 **STIPULATION OF FACT AND JOINT MOTION FOR RELEASE OF MATERIAL WITNESS(ES) AND ORDER THEREON** **(Pre-Indictment Fast-Track Program)**

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and James P. Melendres, Assistant United States Attorney, and defendant TULIO ESPINOZA-DE LOS MONTEROS, by and through and with the advice and consent of defense counsel, Jodi D. Thorp, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(i) and (v)(II).

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JPME:lg

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **July 10, 2008**.

4. The material witnesses, Angel Perez-Bailon and Jose Hernandez-Ortiz, in this case:

a. Are aliens with no lawful right to enter or remain in the United States;

b. Entered or attempted to enter the United States illegally on or about June 6, 2008;

c. Were found in an area 50 yards North of the international border with Mexico and were being guided by codefendant Jorge Rene Bernal-Guzman, ~~while the defendant was driving the second load vehicle~~ After the material witnesses were discovered in the United States defendant was going to transport them in the third vehicle, and defendant knew of the fact that they were aliens with no lawful right to enter or remain in the United States;

d. Were paying or having others pay on their behalf an unknown amount up to $2,000 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,

e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to their country of origin.

It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

Dated: 6/19/08.

for Tara Gonzalez
JAMES P. MELENDRES
Assistant United States Attorney

Dated: 6-19-08.

JODI D. THORP
Defense Counsel for
TULIO ESPINOZA-DE LOS MONTEROS

Dated: 6-19-08.

TULIO ESPINOZA-DE LOS MONTEROS
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 6/19/2008.

[signature]
United States Magistrate Judge